

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHRISTOPHER HART, et al,

Plaintiffs,

-vs-

13-CV-6458

CRAB ADDISON, INC., et al,

Defendants.

Proceedings held before the
Honorable Marian W. Payson, Kenneth B.
Keating Courthouse, 100 State Street,
Rochester, New York, on February 20, 2018.

APPEARANCES:

JESSICA L. LUKASIEWICZ, ESQ.,
Appearing for Plaintiffs.

MELISSA J. OSIPOFF, ESQ.,
Appearing for Defendants.

WILLIAM G. BAUER, ESQ.
Appearing for Fisher & Phillips, LLC.

Also present via telephone:
Raymond A. Blanchett, III,
Kevin Cottingim,
Rodney Morris, Defendants.

AUDIO RECORDER: Catherine A. Marr

TRANSCRIBER: Michelle L. McLaughlin, RPR,
Court Reporter,
716/332-3560

(Proceedings recorded by electronic sound
recording, transcript produced by computer.)

1 THE COURT: . . . Payson and, Mr. Morris,
2 you're on the phone?

3 MR. MORRIS: Yes, ma'am.

4 THE COURT: Okay. And, Mr. Blanchett,
5 you're on the phone?

6 MR. BLANCHETT: Yes, ma'am.

7 THE COURT: Okay. And we have been unable
8 to reach Mr. Cottingim. So if he calls in, we'll
9 certainly connect him to the call.

10 And, gentlemen, if I can ask you just to sit
11 tight for a minute, I appreciate your making
12 yourselves available today. I have scheduled the
13 argument or an appearance on the motion filed by
14 your lawyers to withdraw as counsel for you. And I
15 wanted to hear whether you have a position on that
16 particular motion. But before I take up that
17 particular discrete albeit important issue, I
18 wanted to ask counsel whether there have been any
19 developments since our conference -- I don't
20 know -- several weeks ago about your intentions
21 with respect to -- lets start with the case.

22 Miss Lukasiewicz? Just -- why don't you sit,
23 or come to the podium, whatever you're more
24 comfortable. But you need to pull a microphone
25 closer to you.

1 MS. LUKASIEWICZ: Your Honor, since the
2 last time we were in front of the Court, the
3 corrective notice has been mailed, which I think
4 was highlighted for the Court.

5 THE COURT: Yes.

6 MS. LUKASIEWICZ: And we have requested I
7 think on two occasions for the rest of the policies
8 relating to the individual defendants. We haven't
9 heard back. I assume that probably is in
10 connection with the motion -- the reasons set forth
11 in the motion. But we're still waiting for the
12 policies relating to the individual defendants to
13 be able to handle or to deal with that individual
14 issue.

15 THE COURT: Okay. All right. Thank you.
16 What about the sanctions motion? Is it your
17 intention to seek sanctions against the individual
18 defendants? Is that something that you are -- you
19 feel you have a basis to pursue?

20 MS. LUKASIEWICZ: I want to make sure I
21 answer that correctly. I think our position is
22 that it was against all defendants --

23 THE COURT: I mean --

24 MS. LUKASIEWICZ: -- correct.

25 THE COURT: -- your papers say that.

1 Since your papers were filed, of course, there have
2 been some supplemental filings, and there was one
3 filing -- I don't have it in front of me -- it was
4 an affidavit, and to the best of my recollection it
5 said that the individual defendants really had
6 nothing to do with compiling the class list. It
7 seems to me if based on the order before you, and
8 us, you were of the view that your motion really is
9 directed -- well, in the first instance, towards
10 the company is no longer here, and I guess in the
11 second instance against counsel who advised the
12 company. But you don't have a factual basis to
13 dispute that these individual defendants were not
14 involved in the compilation of the class list, and
15 you're not seriously going to be pursuing any
16 argument against them. I would like to encourage
17 you to make that a -- your formal position so that
18 they know and I know whether they are facing a
19 sanctions hearing for class list issues.

20 MS. LUKASIEWICZ: I think our -- it was
21 our intention to still proceed. But I certainly
22 understand your -- the points you're raising. If I
23 could ask for us to provide an update of our
24 position changes in a week or something shorter,
25 certainly we can do so. I think while an affidavit

1 was submitted, certainly it wasn't in response to
2 the sanctions motion. We didn't have an
3 opportunity to delve further into whether they were
4 involved.

5 THE COURT: Well, let me -- let's -- okay.
6 I'll come back to you --

7 MS. LUKASIEWICZ: Sure.

8 THE COURT: -- on that question as we play
9 out the question of withdrawal a little bit more.
10 Thank you.

11 Okay. Let me begin, if I may, with Mr. Morris
12 and Mr. Blanchett. I assume both of you have seen
13 the papers and are aware of the fact that your
14 lawyers have filed a motion to withdraw as your
15 counsel in this action.

16 Mr. Morris, you've seen the papers? You're
17 aware of that?

18 MR. MORRIS: Yes, your Honor.

19 THE COURT: Okay. Mr. Blanchett, have you
20 seen the papers, and are you aware of that
21 application?

22 MR. BLANCHETT: Yes, I have.

23 THE COURT: Okay. All right. Mr. Morris,
24 what is your position on that application?

25 MR. MORRIS: You know, certainly I

1 understand their position to do so. And if I may
2 take a step back. I left the company in January
3 of 2014 and didn't really hear anything, no updates
4 whatsoever between that time and July of last year.
5 So certainly since that time we've had some limited
6 correspondence on that. I certainly understand
7 their decision and desire to pull away, and that's
8 where I stand. I understand.

9 THE COURT: Okay. Do you oppose the
10 application?

11 MR. MORRIS: To answer that question I
12 would say I don't necessarily oppose it. However,
13 based on where we are today, with, you know,
14 providing information on policies, et cetera, I
15 have provided all of my information to Fisher
16 Phillips. So from my perspective I would hope that
17 there wouldn't be a need to seek additional counsel
18 on this issue.

19 THE COURT: Okay. Let me -- let me say I
20 can't predict what the disclosure of those
21 insurance agreements to plaintiffs' counsel is
22 going to yield, whether they're going to review
23 those agreements and agree or disagree with the
24 position taken by you or by your lawyers. What I
25 can say is that right now the action is still

1 pending against you and Mr. Blanchett,
2 Mr. Cottingim, and there is a sanctions motion that
3 is currently pending against you, as well as
4 counsel, for various issues relating to the
5 preparation of the class list in this case.

6 So I understand that you hope that you will be
7 advised that you don't need to be concerned about
8 this lawsuit or any sanctions motion, that is not
9 the case right now. Both the lawsuit and the
10 sanctions motion are still pending. And so I
11 really want to know from you, the position by your
12 lawyers has been, among other things, that they
13 have not received assurances that you either have
14 the ability or are willing to pay the fees that
15 they would charge attendant to their
16 representation. And, you know, they are entitled
17 to be paid for their representation of you.

18 So, I'm trying to figure out what exactly you
19 plan to do here. I mean, you can't just sit back
20 and do nothing. Your options are either to hire
21 new counsel to reach an arrangement with Fisher
22 Phillips regarding your current and continued
23 representation by them, or to represent yourself.
24 Most people don't like to represent themselves, but
25 that is an option. You have been sued in your

1 individual capacity, so you would have the right,
2 if you wanted to, to represent yourself. Those are
3 the three options, and I'd like to know what your
4 plans are. Or what your --

5 MR. MORRIS: Your Honor, thank you for
6 that information. That's the most thorough
7 explanation that I received to date. You know,
8 assuming that this moves forward, you know, I have
9 explored other attorney representation, and
10 certainly was waiting to hear back from the Court
11 on next steps.

12 THE COURT: Okay.

13 MR. MORRIS: And certainly just wanted to
14 be certain that I wasn't charged for any expenses
15 relating to other sanctions from the attorneys.
16 So, you know, should this move forward, I would
17 hope that Fisher Phillips would provide all the
18 information I've given them to date to the
19 plaintiffs' counsel, and from that perspective I
20 would, you know, seek additional representation
21 outside of the current Fisher Phillips
22 organization.

23 THE COURT: Okay. Thank you, Mr. Morris.

24 Mr. Blanchett --

25 MR. BLANCHETT: Yes, ma'am?

1 THE COURT: -- did you hear my
2 conversation with Mr. Morris?

3 MR. BLANCHETT: I did.

4 THE COURT: Okay. Can you tell me what
5 your position is on this application?

6 MR. BLANCHETT: Similar to Rodney. I left
7 the company in November '15 and haven't heard
8 anything. This came as a surprise that the company
9 would leave us unprotected as individual defendants
10 and when we're indemnified employees. And, quite
11 frankly, this has just come down to finding the
12 money. I mean, working with Fisher Phillips to
13 attempt to negotiate a smaller retainer -- just
14 giving an order of magnitude here, we were all sort
15 of wiped out by Ignite Restaurant Group, and it
16 just comes down to being able to afford coverage.
17 I heard your explanation of those. Very helpful as
18 well.

19 So assuming that we can't come to terms on a
20 lesser retainer, it probably makes sense for the
21 three individual defendants to continue to be
22 represented by one law firm just in order to, you
23 know, save money in our own defense. And, you
24 know, we'd get with Mr. Cottingim and Mr. Morris
25 and find other counsel I assume.

1 THE COURT: Okay. I'm just making some
2 notes.

3 MR. BLANCHETT: My preference would be to
4 stay with Fisher Phillips, given that they've been
5 involved since Day One. I mean, I don't know how
6 cumbersome or clumsy it is to make a change at this
7 point. Those are things that we have to --

8 THE COURT: Right.

9 MR. BLANCHETT: We have to learn more in
10 order to make an informed decision.

11 THE COURT: Okay. Thank you,
12 Mr. Blanchett. I'll get back to you and Mr. Morris
13 in just a minute.

14 All right. Miss Osipoff, what would you like
15 to add?

16 MS. OSIPOFF: Well, there's been some
17 additional correspondence that I think is pertinent
18 to this action, particularly with respect to
19 Mr. Cottingim, who is not on the phone --

20 THE COURT: Okay.

21 MS. OSIPOFF: -- that dissent after we
22 filed our reply brief. I would like to provide it
23 to the Court in camera if you would like.

24 THE COURT: Sure. Thank you.

25 MS. OSIPOFF: I provided every email.

1 THE COURT: Okay. All right. I don't
2 think I have enough time on the bench to review all
3 of this correspondence. Let me ask you,
4 Miss Osipoff, when we had a chambers conference a
5 couple of weeks ago, we talked about the fact that
6 the plaintiffs' position with respect to going
7 forward in this action was going to be informed
8 largely, if not exclusively, by insurance and the
9 availability of insurance coverage or the
10 nonavailability of insurance coverage. I strongly
11 encouraged the counsel and the parties to continue
12 to talk, to exchange that information so that
13 everybody would have access to the same information
14 to see whether there could be an agreement reached
15 with respect to the underlying action.

16 Mr. -- I think it was Mr. Morris said to me on
17 the phone that he had provided you copies of
18 policies. Are you in a position to be able to
19 provide those to counsel?

20 MS. OSIPOFF: Yes. So we already provided
21 to counsel the policies for the company. We've
22 been working with the individuals to get copies of
23 their policies. We have copies of Mr. Morris's
24 policies.

25 THE COURT: And by, their policies, you

1 mean like personal umbrella --

2 MS. OSIPOFF: Individual --

3 THE COURT: -- policies.

4 MS. OSIPOFF: Yeah, homeowners or umbrella
5 policies --

6 THE COURT: Okay.

7 MS. OSIPOFF: We have Mr. Morris's
8 policies, as well as the coverage denial letter.
9 We have Mr. Cottingim's policies. And it's my
10 understanding that he's submitted the claim, but
11 has not heard back whether or not they're going to
12 agree that there is a claim. We're going to deny
13 it. And Mr. Cottingim has requested copies of his
14 policies, but we have not yet received them. And
15 I'm not aware if he's actually submitted the claim
16 to the insurance policy -- to the company.

17 THE COURT: Okay.

18 MS. OSIPOFF: We had been hoping to get
19 all of them to be able to provide them to
20 plaintiffs' counsel all at once. But we can
21 certainly provide them piecemeal.

22 THE COURT: Okay. What else did you want
23 to bring me up to date on? Anything else?

24 MS. OSIPOFF: The recent communications
25 from Mr. Cottingim was something that I wanted to

1 call to your attention, because we think it
2 evidences a breakdown in the attorney-client
3 relationship that would make certainly
4 representation of Mr. Cottingim an impossibility.

5 THE COURT: Okay. Well, just glancing
6 through them, I think they do raise some issues
7 that I had not seen raised in other correspondence
8 previously, and I would like to take some time to
9 review them.

10 Let me step back a minute and ask -- this is --
11 this is an unusual posture insofar as the lawsuit
12 was originally filed against a company, now a
13 bankrupt debtor, and three individual defendants
14 who were high-level employees with that company. I
15 have not seen the retainer letter with the company.
16 I have seen the engagement letters dated 2013 with
17 the individuals. And as best I interpret these
18 letters and understand them, what they appear to
19 reflect is that the company was undertaking to pay
20 for the representation of the company and the
21 individual defendants. There's nothing in the
22 letter that says the individual defendants are
23 jointly and severally responsible. Doesn't
24 directly say that under the terms of the letter for
25 the fees.

1 So, the company, as part of its bankruptcy, has
2 resolved this matter. I understand that there is
3 still a large sum that's outstanding from the
4 company to Fisher Phillips or the prior law firm
5 with which you and Mr. Gershengorn were affiliated.
6 But my -- so, I would agree that these engagement
7 letters, they are premised on conditions that no
8 longer exist. They are premised on the
9 understanding expectation that the company is
10 around and that the company will be paying the
11 bills.

12 MS. OSIPOFF: That's right. That's why we
13 provided new engagement letters.

14 THE COURT: Okay. I getcha, and I don't
15 think that that's unreasonable. And I haven't
16 looked at the law on this particular question. The
17 question I have is you are counsel to the
18 individual defendants. You've made notices of
19 appearance. You have defended them up to this
20 point. The company is no longer a defendant in
21 this action, at least for all intents and purposes,
22 if not formally, and they are not in a position to
23 continue to pay the bills. So I would agree with
24 you that you are entitled to new engagement letters
25 that sets -- that set forth the terms of any

1 continued representation, including the client's
2 obligation to pay fees and an understanding of what
3 those fees are.

4 I'm not -- the question I have is are you
5 entitled to another retainer? There's a retainer
6 that has been paid to you by the company to secure
7 the representation of the company and the
8 individual defendants.

9 MS. OSIPOFF: We never had a retainer with
10 the company. They were being billed on a monthly
11 basis.

12 THE COURT: Okay. So, my question is,
13 have you billed the individual defendants for any
14 services that you've rendered since the company has
15 been declared bankrupt, not for services that have
16 been incurred prior to that date that they have
17 failed to pay, or is this a dispute about a
18 retainer? And I'm not convinced that you're
19 entitled to a retainer. You already represent
20 them. You're entitled to be paid for your services
21 on a going-forward basis. And certainly the
22 individual defendants are entitled to say we'd
23 rather be represented by other counsel, or they are
24 entitled to say, and you're entitled to say, these
25 are our fees, and they may or may not be able to

1 afford them.

2 But if the dispute is about whether they should
3 put money forward as a retainer, I'm not
4 necessarily convinced that you're entitled to a
5 retainer under circumstances where you're already
6 representing somebody. So, I'm wondering what your
7 response to that is.

8 MS. OSIPOFF: We haven't sent out any
9 bills to the individual defendants since we don't
10 have the engagement letters in place yet. So we
11 don't have a mechanism as to how the fees are going
12 to be split against the three individuals. But
13 it's my understanding that there's tens of
14 thousands of dollars in legal fees that have been
15 expended on their behalf since the company filed
16 for bankruptcy that we haven't sent invoices for.
17 But, you know, it's our understanding that the
18 individuals have no interest in paying those.

19 THE COURT: Well, I guess my view would be
20 that you should be obligated to come back to me and
21 establish your entitlement to charge them a
22 retainer. I'm not convinced you get to charge them
23 a retainer. As I said, I'm persuaded that you're
24 entitled to be paid for your services, and there is
25 case law that says before you let counsel out for

1 nonpayment there has to be proof of at least a bill
2 and nonpayment, as opposed to just a sort of
3 theoretical -- I shouldn't say theoretical -- but
4 some conversation about whether they are willing to
5 pay a retainer or not willing to pay a retainer.

6 So, did you look up that issue about whether --
7 whether you are legally entitled or even ethically
8 entitled to charge a retainer to clients --

9 MS. OSIPOFF: We didn't --

10 THE COURT: -- whom you already represent?

11 MS. OSIPOFF: -- look at that issue
12 specifically. But I think retainer or not, the
13 individuals have indicated that they're not willing
14 to pay our fees. So, you know, even if we took the
15 retainer out of the engagement letter, if they're
16 not willing to pay our fees, we're back to not
17 being pay.

18 THE COURT: Okay. I didn't hear that
19 exactly in what Mr. Morris and Mr. Blanchett said
20 to me on the phone today. They were talking more
21 about a retainer.

22 So, Mr. Morris, what is your position if the
23 retainer is not an issue, the issue is just paying
24 the bills on a going-forward basis, what is your
25 position with respect to both your ability to pay

1 those fees and your willingness to pay those fees
2 charged by Fisher Phillips?

3 MR. MORRIS: Well, I think from a
4 going-forward basis that would be from today
5 forward, we've had no visibility or very limited
6 visibility on what the reference points for tens of
7 thousands of dollars. I certainly don't have that
8 money and have no ability to pay that.

9 If it is a reasonable hourly rate, certainly
10 that would be something that I would be amenable
11 to. But that's never been the discussion. It was
12 always about a retainer first.

13 THE COURT: Mr. Blanchett?

14 MR. BLANCHETT: I'm in the same place as
15 Mr. Morris. And, you know, I have been
16 corresponding with Fisher Phillips, you know, over
17 the last whatever, ten days or so that -- like I
18 had mentioned before, trying to negotiate a
19 retainer, never about any individual hourly rate.
20 I mean, I totally get that they deserve to be
21 compensated for their time. It's just a matter of,
22 you know, ability.

23 These cases are incredibly expensive for
24 companies. I mean, for individuals it's
25 impossible. And I'd be bankrupt. I mean, we've

1 already been wiped out, like I said by this, and
2 then the flood in Houston. I don't know where I'm
3 supposed to find the money to pay for this defense.

4 THE COURT: Okay. Anybody have anything
5 else they want to add right now? Okay.

6 Mr. Morris and Mr. Blanchett, if I can just ask
7 you to hold on for a minute, I'm going to go off
8 the bench and confer with my law clerk for a few
9 minutes, and then I'll be right back.

10 MR. BLANCHETT: Okay. Thank you.

11 (Short recess was taken.)

12 THE COURT: Okay. Mr. Morris,
13 Mr. Blanchett, are you still on the phone?

14 MR. MORRIS: Yes, ma'am.

15 MR. BLANCHETT: Yes, ma'am.

16 THE COURT: All right. So --

17 MR. COTTINGIM: Kevin Cottingim is on as
18 well.

19 THE COURT: Mr. Cottingim, and you were
20 unavailable at 3:00. Why?

21 MR. COTTINGIM: I had a flight delay. I
22 was on an airplane, and I called in as soon as I
23 got off the plane.

24 THE COURT: Okay. Well, I've -- I've
25 heard oral argument. Miss Osipoff has given me

1 copies of some correspondence you've had with her
2 recently that I have not had a chance to read as
3 carefully as I need to. I flipped through it. So,
4 let me tell you what I would propose we do.

5 With respect to the insurance agreements that,
6 Miss Osipoff, they -- have you provided those to
7 plaintiffs' counsel yet?

8 MS. OSIPOFF: Only the ones for the
9 corporation, not for the individuals.

10 THE COURT: Okay. So you have done that.
11 You have those?

12 MS. OSIPOFF: Yes, your Honor.

13 THE COURT: Okay. Are you satisfied that
14 you have what you need to with respect to the
15 question of coverage through those policies, that
16 is, that there would be no coverage under those
17 policies?

18 MS. LUKASIEWICZ: I think we'd reserve our
19 right once we see the rest of the policies if we
20 had any follow-up questions. We just thought it
21 made sense to look at everything all together just
22 to make sure that we had no follow-up questions.
23 But at this time we have nothing further.

24 THE COURT: Okay. What other insurance
25 policies are you looking for? You're looking for

1 homeowners and any umbrella liability policies?

2 MS. LUKASIEWICZ: Yes, your Honor. Any
3 personal policies they may have.

4 THE COURT: Okay. Mr. Morris,
5 Mr. Blanchett, and Mr. Cottingim, I -- assuming
6 that you each have a policy or policies that are
7 homeowners and umbrella policies, I would encourage
8 you to provide those to Miss Osipoff, if you have
9 not done so already, you know, tomorrow. What I'd
10 like to do is have those policies provided to
11 plaintiffs' counsel so that I can learn, as I'm
12 sure you are interested in learning, whether
13 plaintiffs intend to pursue this action against
14 you. If they don't, it's in everybody's interest
15 to know that sooner rather than later. It is in
16 everybody's interest to know whether you are
17 pursuing sanctions against the individual
18 defendants.

19 There are issues with respect to the withdrawal
20 motion that preclude me from deciding that motion
21 today. But in any event, it's neither here nor
22 there if you're not going to pursue the action
23 against the individual defendants, and you're not
24 going to pursue sanctions against the individual
25 defendants, and then, you know, you'll take a

1 position to date I understand that you wish to
2 pursue your sanctions motions against attorneys.
3 And Mr. Bauer has been retained by Fisher Phillips,
4 and I know I've gotten a previous response by prior
5 counsel -- whose name I can't remember right now.

6 MS. LUKASIEWICZ: Epstein, Becker and
7 Green.

8 THE COURT: Yes. And I will schedule that
9 matter. Clearly the issue of the individual
10 defendants is going to slow all of that down, and
11 I'm not interested in putting them through the
12 anxiety and the cost of dealing with these
13 complicated counsel issues if there really isn't a
14 basis to go forward against them. And I think that
15 it is in everybody's interest to try to determine
16 that. I'm not criticizing you, because I know you
17 have asked for some additional policies, and you're
18 entitled to see them.

19 I'm glad that the individual defendants,
20 Mr. Morris, Mr. Blanchett, Mr. Cottingim, are all
21 on the phone. Please get those policies, if you
22 haven't already, to Miss Osipoff, you know, within
23 a day or two, because what I'm going to do is put
24 this matter on my calendar again for the same time
25 a week from now, and I'd like to have some answers.

1 So I'd like you to work with me, gentlemen,
2 Mr. Morris, Mr. Blanchett, Mr. Cottingim, to get
3 the information that will enable decisions to be
4 made so that you know when we're talking about
5 counsel, whether this case is going to proceed, and
6 then you can make some decisions about whether you
7 are going to hire new counsel, whether you wish to
8 continue to be represented by Fisher Phillips. If
9 Fisher Phillips intends to pursue the question of a
10 retainer, I would require you to provide to me some
11 case law establishing your legal entitlement to
12 that, because I'm skeptical about that aspect, but
13 I agree with you that you're entitled to be paid,
14 but I'm not sure the record, if we're just talking
15 about payment, entitles you to get out now, because
16 I don't think there has been a bill sent and
17 nonpayment made.

18 But if we can resolve the issue with the
19 individual defendants, we can resolve the whole
20 issue of counsel. And then we just have that one
21 sanctions motion, and we can get that done and
22 heard, and we'll be done. Okay.

23 MS. LUKASIEWICZ: Can I speak briefly,
24 your Honor?

25 THE COURT: Yes.

1 MR. COTTINGIM: Your Honor, this is Kevin
2 Cottingim. One thing I want to tell you is I can't
3 find copies of my insurance policies, but I have
4 asked the insurance company to provide them to me.
5 They said it will take them about three days to do
6 it. I've asked for it twice. And as soon as I get
7 them I'll forward them on.

8 THE COURT: Okay. I mean, all I can tell
9 you, Mr. Cottingim, is to just let them know that
10 the Court has required you to produce them. They
11 probably won't care that they hear that. I say
12 that only because sometimes you might get somebody
13 on the other end of the phone who says oh, okay,
14 well then we really will make a special effort to
15 get it -- to get it sooner. So, it's, as I said --

16 MR. COTTINGIM: In further support --

17 THE COURT: -- Mr. Cottingim, as I said, I
18 think this may be in your interest to get this
19 information to plaintiffs' counsel as quickly as
20 possible so that while this case has all of our
21 attention, we can get as many decisions made and to
22 do it in a manner that makes sense. I don't want
23 to keep you all in the case if it is a foregone --
24 not a foregone conclusion, but if after plaintiffs'
25 counsel has enough time to digest the insurance

1 policies, they're in agreement that the case is not
2 going to proceed against you. So I don't want to
3 go through this whole rigmarole and make a
4 determination about whether you, you know, have to
5 get new counsel or not if the case isn't going to
6 go forward.

7 So I am sympathetic to your wanting to know
8 that. I'm also sympathetic that the plaintiffs'
9 counsel is not yet in a position to make that
10 determination. So, you know, I will do what I can
11 to, you know, hold their feet to the fire once they
12 have the information in order to get you a prompt
13 decision. But they're not in a position to do that
14 yet. So I know, Mr. Cottingim, you hear me. I'm
15 just trying to really emphasize to you the
16 importance of trying to put the pressure on the
17 agency to provide you copies. There's no way --

18 MR. COTTINGIM: Your Honor, in further --

19 THE COURT: Let me ask you, Mr. --

20 MR. COTTINGIM: I requested them online.
21 But I'm going to call them too.

22 THE COURT: Yeah. Mr. Cottingim, I can
23 just -- in my personal experience with my insurance
24 company is I can go online and click on my policy.
25 Have you tried that?

1 MR. COTTINGIM: I did that, and it only
2 gave me the one-page summary, and that's where it
3 said to request the full policy, and I would get it
4 in three to four business days.

5 THE COURT: Okay.

6 MR. COTTINGIM: And I haven't got it yet.
7 But I'll call them too.

8 THE COURT: Okay. Well, call -- and you
9 should all, if you haven't gotten them to
10 Miss Osipoff, call as soon as we are done today or
11 first thing tomorrow morning and communicate with
12 her as to the status. Okay, Mr. Cottingim?

13 MR. COTTINGIM: I will.

14 MR. BLANCHETT: Your Honor, may I ask --
15 this is Ray Blanchett. Can I ask one clarifying
16 question?

17 THE COURT: Yes.

18 MR. BLANCHETT: I provided a copy of my
19 umbrella policy to Miss Osipoff. And I opened up a
20 claim and an underwriter or someone has to review
21 the claim. So what we've been waiting for I
22 believe and what's a pregnant lump is for them to
23 weigh in whether or not there's coverage in this
24 case. So are you asking just for the policy --

25 THE COURT: I'm just asking -- I'm asking

1 for just the policies now.

2 MR. BLANCHETT: Okay. Okay. Thank you.

3 THE COURT: Okay. All right.

4 MR. MORRIS: Your Honor, this is Mr.
5 Morris here. I'd like to just go back on record
6 saying I did provide that information as requested
7 on February 2nd.

8 THE COURT: Okay. And my law clerk has
9 just suggested that I emphasize to you all to ask
10 the insurance company to email the policy to you
11 rather than to mail it to you.

12 MR. COTTINGIM: Great point. I will
13 definitely do that.

14 THE COURT: That's what she's here for.

15 Okay. Now, Miss Lukasiewicz, who represents
16 the plaintiffs, has wanted to say something. So go
17 ahead.

18 MS. LUKASIEWICZ: As soon as we get those
19 insurance policies, again, we will look at them,
20 reevaluate whether it still makes sense to proceed
21 on the sanctions motion.

22 THE COURT: Okay.

23 MS. LUKASIEWICZ: The other thing I was
24 just going to ask, we would request the ability to
25 submit any response to the extent that Miss Osipoff

1 submits any briefing on the retainer issue. We
2 request --

3 THE COURT: Yes. Yes.

4 MS. LUKASIEWICZ: -- the ability to
5 actually read the brief, that it's not submitted in
6 camera, just because it has, as indicated in our
7 papers, it's difficult to respond without seeing
8 the --

9 THE COURT: Okay. That's fine. If
10 there's any briefing on the retainer agreement, I
11 would imagine that it can either be submitted
12 without the necessity for sealing or at least
13 redacted so -- the particular facts may be
14 redacted, but the legal argument you're entitled
15 to, and I'll give you a chance to respond to that.

16 MS. LUKASIEWICZ: Thank you, your Honor.

17 THE COURT: Okay. So, we're going to
18 convene again. You don't have to fly to Rochester.
19 We can just do this all by phone. Mr. Morris,
20 Mr. Blanchett, Mr. Cottingim, and counsel, please
21 make themselves available a week from today, same
22 time, and maybe we can have some answers or at
23 least some progress. So I would ask you to --
24 everybody to put this on the front burner, and
25 let's, you know, attend to it, and that's part of

1 the reason I'm giving you a week rather than
2 longer, because I think it helps move it along.

3 Mr. Bauer has been sitting in the back of the
4 courtroom. He represents Fisher Phillips, and the
5 fact that you were here has reminded me, did I give
6 you a briefing schedule?

7 MS. OSIPOFF: Yes, your Honor. I was just
8 going to raise that. There's an opposition that's
9 due on the sanctions piece on March 2nd.

10 THE COURT: For the individual defendants.

11 MS. OSIPOFF: For everybody, the
12 individuals and --

13 MR. BAUER: It said the individuals, not
14 -- it didn't say us.

15 THE COURT: Okay. Why don't you come up
16 to the podium, just so the --

17 MR. BAUER: Your Honor, I read the
18 scheduling order last night, and it does -- it only
19 references the -- I read the scheduling order last
20 evening, and it only references the individual
21 defendants.

22 THE COURT: Yes, you're right, it only
23 references the individual defendants.

24 MR. BAUER: And I did have a conversation
25 with Mr. Lingle. I've had a number of

1 conversations with him over the last week or so,
2 and one of the things we both were aware that the
3 March 16th date that the Court had set as a return
4 date, both he and I were unavailable because of
5 other engagements. So I don't know if -- if we
6 need to get this issue perhaps squared away. I'm
7 prepared to go forward and to prepare papers in
8 opposition on behalf of Fisher Phillips and the
9 individual attorneys that I represent. I can do it
10 in compliance with that scheduling order or --

11 THE COURT: Okay. Let's -- let's do it in
12 compliance with that scheduling order, that is, a
13 response by Fisher Phillips by March 2nd. I'm
14 happy to adjust the March 16th deadline -- oral
15 argument date. We can talk about that maybe next
16 Tuesday if you like, or we can -- I can do that by
17 email. We can adjust that date.

18 MR. BAUER: Okay.

19 THE COURT: Okay?

20 MR. BAUER: Great.

21 THE COURT: All right.

22 MS. LUKASIEWICZ: Your Honor, I am out of
23 the country next -- a week from today. But I'm
24 confident somebody from my office will be
25 available. I just wanted to let the Court --

1 THE COURT: But it's so pleasant dealing
2 with you.

3 MS. LUKASIEWICZ: I'm sure Nelson Thomas
4 wants to be back.

5 THE COURT: I'm sure he does too.

6 MS. OSIPOFF: Just to clarify, will there
7 be an opposition due on behalf of the individual
8 defendants to the sanctions motion on March 2nd, or
9 will that be adjourned?

10 THE COURT: I don't think I can do that
11 right now. This issue is up in the air, and I
12 think that you and they are entitled to clarity in
13 your relationship before you have to put in
14 something as important as a response. I think it's
15 up in the -- you know, it's certainly up in the air
16 as to whether the plaintiffs will be proceeding to
17 seek sanctions against them. So I don't see any
18 reason, and I see a lot of reasons not to require a
19 response by the individual defendants. It may --
20 you know, if they are still in the case, if there's
21 still going to be a sanctions motion against them,
22 I recognize, Mr. Bauer, that may ultimately mean
23 that the sanctions proceedings get extended, but it
24 may well be that they are out of the case, and we
25 can go forward. So I'd like to keep the March 2nd

1 deadline. We'll find an oral argument date that
2 works for everybody. I am going suspend that
3 scheduling order as it pertains to the individual
4 defendants. I had hoped to be able to resolve that
5 issue today and we could move forward. But I
6 can't.

7 MS. LUKASIEWICZ: Thank you, your Honor.

8 MS. OSIPOFF: Thank you, your Honor.

9 MR. BAUER: Thank you, Judge.

10 THE COURT: Anything else? Okay. Thank
11 you. Thank you, gentlemen.

12 MS. OSIPOFF: Thank you.

13 MR. COTTINGIM: Yeah, one other thing,
14 your Honor. This is Kevin Cottingim. I just want
15 to formally apologize for being late for the call.
16 If there was any way I could have got here on time,
17 I would have been.

18 THE COURT: Okay, Mr. Cottingim. We'll
19 talk to you next week.

20 MR. COTTINGIM: Thank you.

21 THE COURT: Okay. Thank you. Goodbye.

22 MR. COTTINGIM: Thank you. Goodbye.

23 THE COURT: We'll just say the
24 continuation of the oral argument. Okay.

25 * * * * *

CERTIFICATION

I certify that the foregoing is a
correct transcription, to the best of my
ability, from the electronic sound recording
of the proceedings in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Court Reporter